

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1987

Introduced by Assembly Member ~~Hernandez Ma~~
(Principal coauthor: Assembly Member Buchanan)
(Principal coauthors: Senators Correa and Simitian)
(Coauthor: Senator DeSaulnier)

February 17, 2010

An act to add Section 7500.5 to the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 1987, as amended, ~~Hernandez Ma~~. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law, *which applies to specified school employees*, and the retirement laws for county employees and city employees also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would *generally* provide, effective July 1, 2011, that any change in salary, compensation, or remuneration principally for the purpose of enhancing a member's benefits would not be included in the calculation of a member's final compensation for purposes of determining that member's defined benefit. The bill would require the board of each state and local public retirement system to establish, by

regulation, accountability provisions that would include an ongoing audit process to ensure that a change in a member's salary, compensation, or remuneration is not made principally for the purpose of enhancing a member's retirement benefits. This bill would limit the calculation of a member's final compensation to an amount not to exceed the average increase in compensation received within the final compensation period and the 2 preceding years by employees in the same or a related group as that member. This bill would also require a board of each state and local public retirement system to establish, by regulation, a requirement that a retired person may not perform services for any employer covered by a state or local retirement system until that person has been separated from service for a period of at least ~~6 months~~ 180 days.

This bill includes Legislative findings expressing the public purpose that would be served by the enactment of this bill and expresses the Legislature's intent to enact legislation that would ensure that these provisions are implemented by all state and local public retirement systems.

This bill would, except as otherwise specified, provide that its provisions would become operative on July 1, 2011. This bill would further provide that its provisions would not become operative unless SB 1425 is also enacted and takes effect on or before January 1, 2011.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares that:
- 2 (1) State and local public retirement boards have been authorized
- 3 under the law to administer retirement systems that provide
- 4 adequate, secure retirement benefits ~~for beneficiaries~~ to participants
- 5 who dedicate their life's work to public service, and their
- 6 beneficiaries.
- 7 (2) Employees partner with their public agency employers to
- 8 fund this benefit.
- 9 (3) Any manipulation of those benefits creates harm for the
- 10 employees, beneficiaries, employers, and taxpayers and should
- 11 not be permitted.
- 12 (b) The Legislature further finds and declares ~~that the~~ that:

1 (1) *The efficacy of the retirement systems is threatened by the*
2 *behavior of those who seek to unfairly and unjustifiably enhance*
3 *or “spike” their pensions.*

4 (e)

5 (2) *Neither the Legislature nor the courts ever anticipated a*
6 *circumstance where the application of the retirement law would*
7 *result in a method that permits inequitable application of*
8 *compensation rules in order to enhance an individual’s retirement*
9 *allowance.*

10 (d)

11 (3) *It is the responsibility of the Legislature to provide guidance*
12 *to every retirement system so ~~they~~ that each system can determine*
13 *the proper elements that go into calculating a member’s retirement*
14 *benefit as recognized by the laws governing the each retirement*
15 *system.*

16 (e)

17 (4) *Retirement systems must employ sound ~~principals~~ principles*
18 *that provide consistent treatment of compensation *earnable**
19 *throughout a member’s career and consistent treatment of*
20 *compensation among ~~a class~~ all classes of employees.*

21 (f)

22 (5) *In order to provide consistent treatment across the retirement*
23 *systems, the reporting ~~system between the~~ procedures used by*
24 *each retirement system and ~~each its~~ participating ~~employer~~*
25 *employers must be sufficiently precise so as to enable the*
26 *retirement system to distinguish between items of remuneration*
27 *that are and are not properly included in a member’s final*
28 *compensation.*

29 (c) *The Legislature further finds and declares that consistent*
30 *administration of state and local public retirement systems is a*
31 *matter of statewide concern.*

32 (d) *The Legislature further finds and declares that the*
33 *procedures contained in this act provide the appropriate method*
34 *for resolving the inequitable application of compensation rules,*
35 *and therefore, provide for the consistent administration of state*
36 *and local retirement systems that is in the public’s best interest.*

37 SEC. 2. ~~Section 7500.5 is added to the Government Code, to~~
38 ~~read:~~

39 7500.5. (a) ~~In order to safeguard the integrity and soundness~~
40 ~~of all public retirement systems, assure prompt delivery of benefits~~

1 and related services to the participants and their beneficiaries, and
2 minimize employer expenses, all state and local public retirement
3 systems shall, at a minimum, administer their systems in
4 compliance with the provisions of this section. Nothing in this
5 section shall be construed to limit the Legislature's authority to
6 adopt more restrictive provisions applicable to a state or local
7 public retirement system.

8 (b) The board of each state and local public retirement system
9 shall establish, by regulation, accountability provisions applicable
10 to participating employers. Those accountability provisions shall
11 include an ongoing audit process to validate compliance with the
12 provisions of this section and penalty provisions for noncompliance
13 with the provisions of this section, including, but not limited to,
14 untimely or inaccurate submissions of any information the board
15 may require in the administration of the system.

16 (c) Any payrate, salary special compensation, or other
17 remuneration determined by the board of a state or local public
18 retirement system to have been paid for the principal purpose of
19 enhancing a member's benefits under that system shall not be
20 included in any calculation of compensation earnable. Any
21 presumption by the board that salary or other remuneration was
22 paid for the principal purpose of enhancing a member's benefit
23 under the system may be rebutted by the member or by the
24 employer on behalf of the member. Upon receipt of sufficient
25 evidence to the contrary, a presumption by the board that salary
26 or other remuneration was paid for the principal purpose of
27 enhancing a member's benefits under that system may be reversed.

28 (d) Cash conversions of accrued employee benefits in amounts
29 that exceed the amount that is both earned and payable to the
30 member during a pay period shall not be credited to or included
31 in any calculation of compensation earnable by any state or local
32 public retirement system.

33 (e) Final settlement or termination pay or similar payment that
34 is received by a member in anticipation of retirement, upon
35 retirement, or separation from employment, shall not be credited
36 to or included in any calculation of compensation earnable by any
37 state or local public retirement system.

38 (f) A retired person, who has not reinstated following retirement,
39 whether or not he or she has attained the normal retirement age,
40 shall have a bona fide separation in service before performing

1 service for any employer covered by a state or local retirement
2 system as an employee, through a third party, or as an independent
3 contractor. A board of a state or local retirement system shall
4 establish, by regulation, the criteria under which a bona fide
5 separation is satisfied. A bona fide separation established by the
6 system shall not be less than six months.

7 (g) Compensation credited to, or included in, any calculation
8 of compensation earnable for an employee who is not in a group
9 or class shall not exceed, during the final compensation period as
10 well as two years immediately preceding the final compensation
11 period, the average increase in compensation earnable during the
12 same period for all employees of that same employer who are in
13 the closest related group or class.

14 (h) For the purposes of this section, the following definitions
15 shall apply:

16 (1) "A group or class of employees" means a number of
17 employees of the same employer considered together because they
18 share job similarities, work location, collective bargaining unit, or
19 other logical work grouping. Under no circumstance shall one
20 employee be considered a group or class.

21 (2) "Payrate or salary" means the normal monthly rate of pay
22 or monthly base pay of the member paid in cash and pursuant to
23 publicly available pay schedules to similarly situated members of
24 the same group or class of employment for services rendered on
25 a full-time basis during normal working hours.

26 (3) "Payrate or salary for a member who is not in a group or
27 class" means the monthly rate of pay or monthly base pay or salary
28 of the member, paid in cash and pursuant to publicly available pay
29 schedules, for services rendered on a full-time basis during normal
30 working hours, subject to the limitations of subdivision (g).

31 (4) "Special compensation" means a payment received for
32 special skills, knowledge, abilities, work assignment, workdays
33 or hours, or other work conditions.

34 (5) "Compensation earnable" means the salary or payrate,
35 special compensation, or other remuneration of the member used
36 in the determination of final compensation for the purposes of
37 calculation of a member's retirement benefit.

38 SEC. 3.—(a) It is the intent of the Legislature to enact changes
39 in the Education Code applicable to the State Teachers' Retirement
40 System (Part 13 (commencing with Section 22000) of Title 1 of

1 the Education Code) to implement the provisions established in
2 Section 7500.5 of the Government Code.

3 (b) ~~It is the intent of the Legislature to enact changes in the~~
4 ~~Public Employee's Retirement Law (Part 3 (commencing with~~
5 ~~Section 20000) of Division 5 of Title 2 of the Government Code)~~
6 ~~to implement the provisions established in Section 7500.5 of the~~
7 ~~Government Code.~~

8 (c) ~~It is the intent of the Legislature to enact changes in the~~
9 ~~County Employees Retirement Law (Part 3 (commencing with~~
10 ~~Section 31200) of Division 4 of Title 3 of the Government Code)~~
11 ~~to implement the provisions established in Section 7500.5 of the~~
12 ~~Government Code.~~

13 (d) ~~It is the intent of the Legislature to enact changes to Chapter~~
14 ~~2 (commencing with Section 45300) of Division 5 of Title 4 of~~
15 ~~the Government Code, governing retirement plans established by~~
16 ~~cities, to implement the provisions established in Section 7500.5~~
17 ~~of the Government Code.~~

18 (e) ~~It is the intent of the Legislature to enact changes to Chapter~~
19 ~~4 (commencing with Section 50800) of Part 1 of Division 1 of~~
20 ~~Title 5 of the Government Code, governing police officers' pension~~
21 ~~fund laws and firemen's pension fund laws, to implement the~~
22 ~~provisions established in Section 7500.5 of the Government Code.~~

23 SEC. 4. ~~The provisions of this act shall be operative for all~~
24 ~~active and future members of the applicable retirement systems~~
25 ~~commencing on July 1, 2011.~~

26 SEC. 2. *Section 7500.5 is added to the Government Code, to*
27 *read:*

28 7500.5. (a) *In order to safeguard the integrity and soundness*
29 *of public retirement systems, assure prompt delivery of benefits*
30 *and related services to the participants and their beneficiaries,*
31 *and minimize employer expenses, state and local public retirement*
32 *systems shall administer retirement benefits in accordance with*
33 *the principles articulated in this section. Nothing in this section*
34 *shall be construed to limit the Legislature's authority to adopt*
35 *more restrictive benefit provisions applicable to a state or local*
36 *public retirement system.*

37 (b) *The board of each state and local public retirement system*
38 *shall establish, by statute or regulation, accountability provisions*
39 *that shall include an audit process to ensure compliance with the*
40 *principles articulated in the provisions of this section. The*

1 *accountability provisions shall be enforceable by the imposition*
2 *of monetary penalties or fees, including, but not limited to, untimely*
3 *or inaccurate submissions of any information that the board may*
4 *require in the administration of the system.*

5 *(c) Any payrate, salary, special compensation, or other*
6 *remuneration determined by the board of a state or local public*
7 *retirement system to have been paid for the principal purpose of*
8 *enhancing a member's retirement benefits under that system shall*
9 *not be included in compensation earnable. Where the board of a*
10 *state or local public retirement system determines that payrate,*
11 *salary, special compensation, or other remuneration was paid for*
12 *the principal purpose of enhancing a member's benefit, the member*
13 *or the employer may present evidence to the contrary. Upon receipt*
14 *of sufficient evidence to the contrary, a board may reverse its*
15 *determination that payrate, salary, special compensation, or other*
16 *remuneration was paid for the principal purpose of enhancing a*
17 *member's retirement benefits.*

18 *(d) Cash conversions of accrued employee benefits in amounts*
19 *that exceed the amount that is both earned and payable to the*
20 *member during the member's applicable final compensation*
21 *measurement period shall not be credited to, or included in,*
22 *compensation earnable by any state or local public retirement*
23 *system.*

24 *(e) Final settlement or termination pay or any similar payment*
25 *that is received by a member in anticipation of retirement, or*
26 *separation from employment, or upon retirement, shall not be*
27 *included in compensation earnable by any state or local public*
28 *retirement system.*

29 *(f) A retired person, who has not reinstated following retirement,*
30 *shall have a separation in service for a period of at least 180 days*
31 *before performing service for any employer covered by the state*
32 *or local retirement system from which he or she retired, whether*
33 *as an employee, through a third party, or as an independent*
34 *contractor. This requirement shall apply to all persons who retire*
35 *on and after January 1, 2011.*

36 *(g) Any increase in compensation earnable for an employee*
37 *who is not in a group or class shall not exceed, during the final*
38 *compensation period as well as two years immediately preceding*
39 *the final compensation period, the average increase in*
40 *compensation earnable during the same period for all similarly*

1 *situated members in the closest related group or class of that same*
2 *employer.*

3 *(h) For the purposes of implementing this section, all state or*
4 *local public retirement systems shall have terms or definitions*
5 *consistent with the following:*

6 *(1) "A group or class" means a number of employees of the*
7 *same employer considered together because they share job*
8 *similarities, work location, collective bargaining unit, or other*
9 *logical work grouping. Under no circumstance shall one employee*
10 *be considered a group or class.*

11 *(2) "Payrate" or "salary" means the normal monthly rate of*
12 *pay or monthly base pay of the member paid in cash and pursuant*
13 *to publicly available pay schedules to similarly situated members*
14 *of the same group or class for services rendered on a full-time*
15 *basis during normal working hours.*

16 *(3) "Payrate" or "salary" for a member who is not in a group*
17 *or class means the monthly rate of pay or monthly base pay, paid*
18 *in cash and pursuant to publicly available pay schedules, for*
19 *services rendered on a full-time basis during normal working*
20 *hours, subject to the limitations of subdivision (g).*

21 *(4) "Special compensation" includes a payment received for*
22 *special skills, knowledge, abilities, work assignment, workdays or*
23 *hours, or other work conditions.*

24 *(5) "Compensation earnable" includes payrate, salary, special*
25 *compensation, or other remuneration, or any combination of the*
26 *foregoing, of the member.*

27 *SEC. 3. Except as otherwise specifically provided, the*
28 *provisions of this act shall become operative on July 1, 2011.*

29 *SEC. 4. This bill shall become operative only if Senate Bill*
30 *1425 of the 2009–10 Regular Session is enacted and takes effect*
31 *on or before January 1, 2011.*